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Paper No. 17.

GUERRY LEONARD GRUNE
784 S VILLIER CT.
VIRGINIA BEACH VA 23452

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AUG 25 2004

In re Application of
Grune et al.
Application No. 09/896,238
Filed: June 29, 2001
Attorney Docket No.: n/a

OFFICE OF PETITIONS

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: ON PETITION
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This application has been referred to this office in view of the communication filed July 24, 2004, captioned "withdrawal of express abandonment" which is being treated in a light most favorable to applicants as a petition under 37 CFR 1.182 asking that the USPTO disregard the letters of express abandonment filed October 16, 2003.

So construed, the petition is **granted**.

Petitioners are apparently concerned that notwithstanding that prosecution has continued since October 16, 2003, when an RCE was also filed, and to date, the USPTO has not recognized the aforementioned letters of express abandonment filed under 37 CFR 1.138, there remains the possibility of recognition.

Inspection of the record reveals that petitioner also made such express abandonment contingent on the (then) filing of a continuing application, a circumstance that did not occur, and given the fact that this application was not then closed to prosecution, an express abandonment was an extremely unlikely--and unnecessary-- reply to a non final office action, especially in light of the concurrent filing of a request for continued examination of the same application. Unless and until a letter of express abandonment is timely acknowledged by an appropriate USPTO official, that letter has no force and effect. See 37 CFR 1.138(a); MPEP 711.01. Manifestly, the USPTO has not recognized the letters of express abandonment to date herein, and, on petition, the USPTO will continue to disregard the letters purporting to expressly abandon this application filed October 16, 2003. On a one time basis, the fee for this petition is waived.

This application is being returned to Technology Center AU 2175.

Telephone inquiries related to this communication should be directed to the undersigned at (703) 305-1820.

Brian Hearn
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner for
Patent Examination Policy